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10 **IN THE SUPREME COURT**  
11 **STATE OF ARIZONA**  
12

13 PETITION TO AMEND THE ARIZONA  
14 RULES OF CIVIL PROCEDURE TO  
15 ADOPT RULE 5.2 AND AMEND RULE  
16 84

Supreme Court No. R\_\_\_\_\_

**Petition to Amend the Arizona Rules  
of Civil Procedure to Adopt Rule 5.2  
and Amend Rule 84**

17 Pursuant to Rule 28 of the Rules of the Arizona Supreme Court, the State Bar of  
18 Arizona hereby petitions this Court to amend the Arizona Rules of Civil Procedure by  
19 adopting a new Rule 5.2 (attached as Exhibit A) and by amending Rule 84 to add a new form  
20 (attached as Exhibit B). Proposed Rule 5.2 would authorize limited appearances by  
21 attorneys in certain matters involving the alleged financial exploitation of vulnerable adults,  
22 and sets forth procedures for the withdrawal of attorneys from such appearances upon  
23 completion of the task or tasks for which they are retained.

**Description and Rationale for the Rule**

24 **I. The Need for Legal Representation for Financially Exploited Adults, and**  
25 **Allowing Limited Appearances to Help Address this Need.**

26 The Adult Protective Services Act, A.R.S. § 46-451, et seq., (the "Act") sets forth a  
set of legal remedies to protect the rights of vulnerable adult victims of financial  
exploitation, including giving such victims the right to sue those who have allegedly misused

1 or misappropriated their assets. The reality, however, is that this legal protection remains  
2 beyond the reach of many victims who cannot afford an attorney to represent them  
3 throughout a legal proceeding to vindicate their rights.

4 A partial solution to this problem is to allow attorneys to make limited appearances on  
5 behalf of victims in such actions. There are practitioners who are willing to represent  
6 victims in these actions, many on a pro bono or reduced fee basis, but only if their  
7 involvement in a matter ends after a complaint is filed under the Act or an initial hearing is  
8 held before a court. But, given the financial risks associated with making a commitment to  
9 represent such a person until the conclusion of such a matter, they are unwilling to make a  
10 general appearance because of a concern that a court will not allow them to withdraw after  
11 the attorney initiates the action or obtains preliminary relief. Allowing an attorney to make a  
12 limited appearance would encourage attorneys to take on such cases, making it easier for  
13 victims to obtain legal assistance, at least at the beginning of a case.

14 Permitting limited appearances would require amending or supplementing Rule 5.1 of  
15 the Arizona Rules of Civil Procedure, which currently authorizes attorneys to make only a  
16 general appearance in an action and does not allow for limited appearances. Limited  
17 appearances, however, are already authorized on a 3-year trial basis under Rule 9 of the  
18 Arizona Rules of Family Law Procedure, and the procedure has reportedly worked well.  
19 Proposed Rule 5.2 would extend the use of limited appearances on a 5-year trial basis in civil  
20 actions involving the protection of financially exploited vulnerable adults.

21 Under the proposed Rule, attorneys would be permitted to make a limited appearance  
22 by filing a notice of limited scope representation, which (among other things) would "specify  
23 the matters, hearings or issues with regard to which the attorney will represent the party."  
24 [Exhibit A, Proposed Rule 5.2(a)]. To facilitate the use of this procedure, the State Bar also  
25 proposes adding a form to Rule 84 that an attorney could use to make a limited appearance.  
26

1 [Exhibit B]. Once such an appearance is made, service upon the lawyer would constitute  
2 service on the party for purposes of Rule 5(c). [Exhibit A at 5.2(b)].

3       Upon completion of the representation, an attorney's withdrawal from the matter, if  
4 the client consents, would be accomplished through the filing of a notice without further  
5 involvement by the Court. [*Id.* at 5.2(c)(1)]. If a client has not consented to the attorney's  
6 withdrawal, withdrawal would be permitted only by motion served upon the client and all  
7 other parties, which would permit the Court to consider whether the attorney has completed  
8 the limited scope representation. [*Id.* at 5.2(c)(2)]. Collectively, these provisions are  
9 intended to preserve the courts' traditional role in overseeing withdrawal and to vest the  
10 courts with the discretion to ensure that the attorney has discharged his or her  
11 responsibilities. At the same time, an attorney making a limited appearance under this Rule  
12 would have the assurance that he or she would be allowed to withdraw if the attorney has  
13 completed the tasks for which he or she was retained.

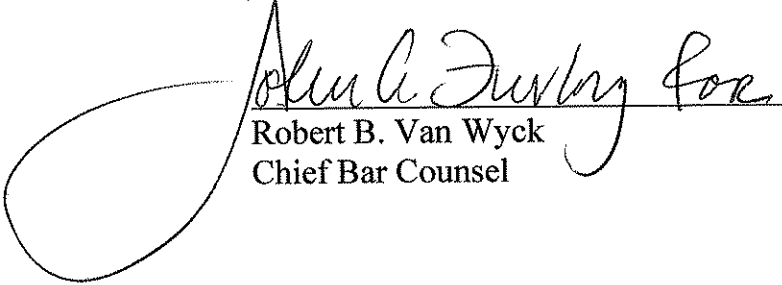
## 14 **II. Adoption of Rule 5.2 on a Pilot-Project Basis.**

15       Given the relative infancy of the concept of limited scope appearances and the lack of  
16 any historical basis upon which to evaluate application of the concept in cases involving  
17 financial exploitation of vulnerable adults, the State Bar recommends adoption of Rule 5.2  
18 and the accompanying form on a pilot-project basis for a period of five (5) calendar years.  
19 Such time should afford the courts, practitioners and interested persons the opportunity to  
20 evaluate the advisability of adopting this proposed Rule on a permanent basis. Accordingly,  
21 proposed Rule 5.2(d) expressly deems the Rule experimental in nature and provides for its  
22 expiration five (5) calendar years from its effective date unless otherwise extended.

## 23 **Conclusion**

24       The State Bar of Arizona respectfully requests that the Court adopt proposed Rule 5.2  
25 and amend Rule 84 of the Arizona Rules of Civil Procedure in accord with this Petition.  
26

1 DATED this 12<sup>th</sup> day of December, 2007.

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3   
4 Robert B. Van Wyck  
5 Chief Bar Counsel

6 Electronic copy filed with the  
7 Clerk of the Supreme Court of Arizona  
8 this 12<sup>th</sup> day of December, 2007.  
9 by: Cathleen Lundgren  
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## **Exhibit A**

## **Exhibit A**

***Proposed Rule 5.2***

**Rule 5.2 Limited Scope Representation in Vulnerable Adult Exploitation Actions Brought under A.R.S. § 46-451, *et seq.***

(a) **Limited Appearance.** An attorney may make a limited appearance on behalf of a claimant in a vulnerable adult exploitation action brought under A.R.S. § 46-451, *et seq.*, by filing and serving a Notice of Limited Scope Representation in the form prescribed in Rule 84, Form 8. The notice shall:

(1) state that the attorney and the party have a written agreement that the attorney will provide limited scope representation to the party for the purpose of representing the party in such an action; and

(2) specify the matters, hearings or issues with regard to which the attorney will represent the party.

(b) **Service; Limits on Scope of Appearance.** Service on an attorney making a limited appearance on behalf of a party shall constitute effective service on that party under Rule 5(c) with respect to all matters in the action, but shall not extend the attorney's responsibility for representing the party beyond the specific matters, hearings or issues for which the attorney has appeared. Nothing in this Rule shall limit an attorney's ability to provide limited services to a client without appearing of record in any judicial proceedings.

(c) **Withdrawal.** Upon an attorney's completion of the representation specified in the Notice of Limited Scope Representation, the attorney may withdraw from the action as follows:

(1) *With Consent.* If the client consents to withdrawal, the attorney may withdraw from the action by filing a Notice of Withdrawal with Consent, signed by both the attorney and the client, stating: (i) the attorney has completed the representation specified in the Notice of Limited Scope Representation and will no longer be representing the party; and (ii) the last known address and telephone number of the party

who will no longer be represented. The attorney shall serve a copy of the notice on the party who will no longer be represented and on all other parties. The attorney's withdrawal from the action shall be effective upon the filing and service of the Notice of Withdrawal with Consent.

(2) *Without Consent.* If the client does not consent to withdrawal or sign a Notice of Withdrawal with Consent, the attorney may file a motion to withdraw, which shall be served upon the client and all other parties, along with a proposed form of order.

(i) If no objection is filed within ten (10) days from the date the motion is served on the client, the court shall sign the order unless it determines that good cause exists to hold a hearing on whether the attorney has completed the limited scope representation for which the attorney has appeared. If the court signs the order, the withdrawing attorney shall serve a copy of the order on the client. The withdrawing attorney also shall promptly serve a written notice of the entry of such order, together with the name, last known address and telephone number of the client, on all other parties.

(ii) If an objection is filed within ten (10) days of the service of the motion, the court shall conduct a hearing to determine whether the attorney has completed the limited scope representation for which the attorney appeared.

(d) **Expiration Date.** This Rule shall be deemed experimental in nature and shall expire five (5) calendar years from its effective date unless otherwise extended.



## **Exhibit B**

***(Proposed) Form 7. Notice of Limited Scope Representation (Emergency Financial Exploitation Action)***

Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
City, State, Zip Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
State Bar #: \_\_\_\_\_  
Representing: \_\_\_\_\_

ARIZONA SUPERIOR COURT OF \_\_\_\_\_

\_\_\_\_\_  
[Name]

Plaintiff,

\_\_\_\_\_  
[Name(s)]

Defendant(s).

Case No. \_\_\_\_\_

NOTICE OF LIMITED SCOPE  
REPRESENTATION IN ACTION  
BROUGHT PURSUANT TO A.R.S.  
§ 46-451, *ET SEQ.*

(Assigned to the Honorable \_\_\_\_\_)

TO: THE COURT, THE CLERK OF THE COURT AND ALL PARTIES

Undersigned counsel, pursuant to Ariz. R. Civ. Proc., Rule 5.2, hereby enters  
[his/her] Notice of Limited Appearance for [name of party represented], who [is/is  
not] also the real party in interest, as follows:

1. Undersigned counsel's appearance in this matter shall be limited in scope  
to the following matters, hearings or issues: [Identify the specific matters, hearings or  
issues with regard to which the representation shall extend].

2. Undersigned counsel hereby states that undersigned counsel and  
[his/her] [client/client's legally authorized representative] have a written agreement  
that the attorney shall provide limited scope representation for the purpose of  
representing the client in a vulnerable adult exploitation action in this Court, and this  
Notice accurately represents the scope of that agreed representation.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Client or client's legally authorized representative